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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/982,559 12/02/97 CAHILL

J NSP-CASE-5

IM22/0316
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EXAMINER

GUARRIELLO, J

ART UNIT

PAPER NUMBER

1771

DATE MAILED:

03/16/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

08/982559

Applicant(s)

Cahill

Examiner

John Guarriello

Group Art Unit

1771

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 12/16/1999
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 2-25 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 2-25 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Art Unit: 1771

DETAILED ACTION

15. Examiner acknowledges papers # 9 and 10 extension of time and the CPA.

16. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

17. Claims 2-25 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The specification teaches that the wind load wall diaphragm requirements for manufactured housing for transverse wind loading are needed as critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). It is the examiner's position that these requirements change as the law changes and secondly there is no specificity in the specification as filed what these "wind load" requirements entail.

18. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

19. Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 1771

In claim 23, lines 2-3, it is not clear what the phrase “subject to government regulations with respect to transvers wind loading” encompasses since laws and regulations change and no clear support is found in the specification as filed.

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

21. Claims 2-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hartman 4,425,396 in view of Minnick 5,098,778

Hartman teaches an insulative panel with at least three layers, a synthetic organic polymeric foam, a protective weathering layer of a thermoplastic sheet, and a flexible backer layer, (see abstract) Hartman teaches the foam layer can be a variety of synthetic, organic, polymeric materials which produce low density foams, (column 1, lines 58-68). Hartman teaches a weathering layer with thermoplastic properties, like chlorosulfonated polyethylene, (column 2, lines 40-49). Hartman teaches a backer layer interposed between the foam layer and the weathering layer, (column 2, lines 17-24). The backer layer can be fibrous material woven or nonwoven with the fibers being reinforcing like asbestos, fiberglass, or aluminum, (column 2, lines 17-25). Hartman differs from the claimed invention because it is silent about fiberglass reinforced material bonded to the first layer.

Art Unit: 1771

Minnick teaches light weight high strength laminate with a low density fiber reinforced thermoplastic core between two parallel sheets, (see abstract). Minnick teaches that these can be used in laminates which are used in prefabricated building panels, (column 1, lines 15-20). Minnick teaches these laminates can be used in the building panels in the modular home segment of the construction industry, (column 2, lines 54-56). Minnick teaches a thermoplastic material which upon consolidation forms a matrix to bond the fibers together in the composite layer, (column 4, lines 1-30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made in view of the teachings of Minnick with regard to the fiber reinforced matrix to modify Hartman motivated with the expectation that the fiber reinforced matrix of Minnick would enhance the wall structure with improved strength and durability.

22. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Art Unit: 1771

23. Claims 2-25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-26 of U.S. Patent No. 5,863,091. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art at the time the invention was made in view of the teachings of the claims of '091 to modify the vehicle floor assembly motivated with the expectation that since '091 teaches in the claims at least a three layer laminate with a polymer fabric layer reinforced which can be woven or non-woven and the cellulosic or unwoven polymer fabric bonding layer is laminated to a polymer fabric reinforcing layer and the other limitations are taught in the claims. The claimed invention differs because it is directed to a wall structure and '091 to a floor assembly. However, the components are essentially the same, see claims 2-23. Moreover, it has been held that where the general conditions of a claimed invention are disclosed, discovering the optimum ranges involves only routine skill in the art, *In re Aller*, 105USPQ 233.

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is (703) 308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-5408.

Application/Control Number: 08/982559

Page 6

Art Unit: 1771


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



John J. Guarriello:gj

Patent Examiner

March 10, 2000



TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700